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MEASURES TO ENSURE THE HARMONIZATION OF TAX SYSTEMS AND POLICIES IN THE WEST AFRICAN SUBREGION IN ORDER TO FACILITATE ECONOMIC CO-OPERATION AND INVESTMENT

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Chapter 1 Terms of Reference and Limitations

According to the terms of reference the object of this study is to formulate proposals for the harmonisation of tax policies in the West African subregion towards national, intra-regional and international investments, in order to further economic integration of the subregion and in order to create a regional investment climate attractive to international investments. The study is limited in three ways:

1. Full economic integration requires the harmonisation of indirect taxes and direct taxes but this study emphasizes the harmonisation of direct taxes for two reasons. Firstly, the terms of reference relate tax policies to investment flows, which are more responsive to direct taxes, rather than to product flows which are more responsive to indirect taxes. Secondly, the harmonisation of customs-duties and turnover taxes is already being studied and even implemented in the framework of existing integration movements in the West African sub-region. Moreover, direct taxes are understood, for the purposes of this study, to refer to income taxes only. All other direct taxes are excluded from the survey.

2. The impact of income taxation on investments or more specifically on direct private investments, depends on the effects of tax measures on national savings and the willingness to invest. Where intraregional and international investment flows are concerned, not only the tax system of the host country but also the tax system of the home country and the combined effect of both tax systems are relevant. In further investigating the relation between taxation and national, intraregional and international investment flows a distinction is made between obstacles to investment and incentives measures. In identifying obstacles and incentives to national investments reference will be made to income taxes applying to individuals and legal persons. In the case of intraregional and international investments, reference will be made only to income taxes applying to legal persons because such investments are almost exclusively effected by corporate entities.

3. For practical reasons this study will not embark on a full scale harmonisation of the tax systems of the West African Countries. Harmonisation is interpreted more restrictively. In defining an investment, friendly income tax policy as regards national investment flows, the various recommendations, if uniformly applied, already result in a convergency of the various tax systems. On a regional level concrete proposals are formulated entailing a common approach towards income tax incentives.

The recommendations made in this study concern the removal of income tax obstacles to private direct investments and the use of incentive measures in order to arrive at an optimal allocation of economic resources. In addition to their impact on optimal economic growth however, revenue effects and administrative feasibility of the recommended policies will also be taken into account.

Chapter 2 discusses income tax obstacles to national investments and evaluates various incentive measures. Chapter 3 discusses income tax obstacles and incentives to intraregional investments and contains proposals for the harmonisation of incentive policies. Chapter 4 discusses options for income tax policies of West African countries towards international investors and their home countries with particular reference to the five largest capital exporting countries i.e. the U.S.A., Japan, the Federal Republic of Germany, the U.K. and France.

Chapter 2 National investment flows

Capital formation, which depends on investment, is essential for economic growth and development. The definition of an investment friendly income tax policy requires a clarification of the impact of income taxes on investment, and an identification of obstacles and incentive measures. In doing so it must be kept in mind that the existing income tax systems in West Africa, as copied from the former colonial powers, still have a rather limited impact on the economy because of the small size of the modern sector. Nevertheless, the definition of an investment friendly income tax policy is important because of the potential growth of this modern sector.

Income taxes affect capital formation first by altering the quantity of saving (maximum possible level of capital formation) and second by affecting the willingness to invest (actual level of capital formation). An investment friendly income tax policy must stimulate savings and reward the willingness to invest. Under the circumstances, notably an unstable economy (high inflation), an underdeveloped banking sector, a high risk investment climate and a social attitude of investing savings in unproductive uses, taxation of investment income may easily prove to be an obstacle to investment. Consequently interest, capital gains on securities and productive assets and dividends should be taxed moderately. This implies the exclusion from taxable income of interest earnings on saving accounts, deposits and bonds issued by unrelated parties. This further implies the exemption from taxable income of individuals of capital gains on securities and the exclusion from taxable income of individuals and companies of capital gains on machinery and equipment. Capital gains on luxurious real estate should be fully taxed. This finally implies the removal of economic double and multiple taxation of dividends. Individual shareholders should be granted a credit against their tax liability, of a portion of corporate income taxes paid in respect of dividends received. Inter-corporate dividends should be completely exempted from taxable income of the recipient parent. Both individual and corporate shareholders should receive a credit with refund for dividend withholding taxes.

In allowing deductions from gross taxable income, all investment related expenses should be allowed. More specifically, mortgage interest on low cost, owner occupied housing should be fully deductible from taxable income of individuals. All income producing expenses, including depreciation of capital assets, should be fully deductible for individuals and companies. They should be allowed to indefinitively carry forward the losses incurred in previous years.

In determining the rates of income taxation, steep progression in personal income taxes and relatively high rates as compared to developed countries, in corporate taxes, should be avoided. It is recommended to further discuss an appropriate rate structure of personal income taxes within the framework of an overall attempt to integrate the schedular and global income tax systems of the region. It is further recommended to set corporate income tax rates at 40%

In addition to removing obstacles to saving and investment, the use of incentives can be considered. Their effectiveness in increasing the volume of investment, however, is doubted, though they are believed to have an impact on the sectoral and geographical allocation of investments. Consequently, incentives should be used with caution and preferably only within a well defined economic strategy. This implies a general preference for the least costly techniques and the lower levels of generosity. Savings could be induced by allowing the deduction of contributions to specific saving devices whether individual (specific accounts) or collective (social security and insurance schemes). In addition, governments could grant bonus interest on certain schemes.

The ideal investment incentive for developing countries would at the same time be favorable to labour intensive investments, easy to administer, cheap in terms of revenue and popular in business circles. A closer look at the various devices, including exemptions, tax holidays, accelerated depreciation, investment allowances, investment reserves, rate reductions, tax credits, stabilisation of the fiscal regime and cash grants, however, all have their advantages and disadvantages. For reasons of revenue loss and administrative difficulties, unconditional tax holidays, overall rate reductions, cash grants, investment reserves and stabilisation of fiscal regimes, are eliminated as incentive devices in the framework of an investment friendly tax policy of West African countries.

Of the remaining devices, accelerated depreciation and investment allowances can be widely used though it must be realised that they carry a bias in favour of capital intensive ways of production. Tax credits, being more costly, should be used selectively to offset this bias. In addition, to stimulate employment and relieve the administration, reduced rates are recommended for small local firms, combined with presumptive techniques for various categories of very small tax payers. As such, a package of incentive measures is defined which comes as close as possibble to the ideal incentive measure for developing countries.

The proposed package of incentives could, if this were considered necessary, be supplemented by the selective use of conditional tax holidays and tariff concessions within a regional framework.

Chapter 3 intraregional investment flows

Intraregional investment flows, though still limited in size, can be an important vehicle for the sharing of know-how and the realisation of economies of scale in the West African region. Therefore, a growth oriented income tax policy should interfere as little as possible with the optimal allocation of regional investment resources.

This implies first of all the removal of income tax obstacles to the inflow and outflow of capital from one country of the region to another. The country receiving the investment that is, the host country should avoid imposing higher taxes on the overall income of foreign parent and domestic subsidiary or branch as compared to the domestic situation. In the parent-subsidiary relation, the host country should not disallow the deduction of expenses merely because they are paid to a foreign parent. Moreover, withholding taxes should take account

of the expenses incurred by the recipient (reduced rates) and the mechanism to avoid economic multiple taxation of dividends should be regionalised by exempting intraregional dividends from withholding tax. Finally the host country should fairly allocate expenses and profits to domestic branches and refrain from imposing branch profits taxes.

The country in which the investment originates that is, the home country, should exempt West African source investment income from the taxable income of the domestic company and should allow the deduction of losses of regional branches. Ideally it should grant a credit to individuals for foreign corporate taxes paid on dividends but this is in practice not easy to realise. Home and host country together should agree on a common set of rules to determine the source of investment income.

Secondly, an uninterrupted regional flow of investments would require a harmonisation of investment inventives. A package of incentives as discussed in Chapter 2, is preferred. Cautiously used conditional tax holidays and tariff concessions could be added to this package as soon as a regional development policy and a common customs tariff are established.

The level of generosity of the incentives is a matter of political choice but general guidelines can be derived from objective factors such as minimising revenue loss and administrative costs, maximising results, interplay between incentives and other features of the tax system and between incentives in West Africa and elsewhere.

Consequently, a regional incentive policy should include depreciation at choice, investment allowances for capital investments up to 20% of costs, reduced rates (25%-30%) for small local enterprises and tax credits for labour related costs.

Tax holidays, if used for regionally agreed selective purposes, should be granted for 3-7 years and up to 100-150% of initial investment costs. Tariff concessions, if granted within a common customs tariff, should be available for initial capital goods and spare parts only. A reduction is favored over a total exemption for revenue reasons.

Chapter 4 International investment flows

International investment flows may positively contribute to capital formation and economic growth in the West African subregion for three reasons. They increase resources available for investment in addition to domestic savings. They augment foreign exchange resources in addition to export earnings. Finally, except for a transfer of resources, they involve a transfer of other scarce production factors such as entrepreneurial skills, know-how and technology. Consequently, a growth oriented income tax policy seeks the removal of obstacles to the inflow of international investments. In addition, it seeks to increase the attractiveness of the subregion through incentive measures. Obstacles and incentives are in principle the same as those mentioned in Chapters 2 and 3. Nevertheless the recommendations of chapter 4 differ from those in chapter 2 and 3 for 2 reasons. First most

international investments are realised by powerful Trans-national Corporations which seek to maximise global profits and minimise overall tax burden with legal and less legal means.

Secondly most international investments orginate in 5 OECD Countries (USA, Japan, Federal Republic of Germany, the United Kingdom), which generally tax the world wide income of residents and grant unilateral relief against double taxation by way of foreign tax credit. Both circumstances require a further conditioning of recommendations. Though in principle all expenses made for the production of income should be deductible, a mechanism is required to enable West African tax authorities to adjust socalled "transfer prices" for transactions between related enterprises. In principle, tax rates should not be lower than the average income tax rates in the major capital exporting countries in order to prevent a unilateral transfer of revenue to the OECD country. On the other hand, withholding tax rates should also take account of the costs related to the investment and the necessary access to capital and technology. Therefore, the corporate income tax rate should be 40%, the dividend withholding tax rate 10% and the withholding tax rates for royalties and interest payments 25%.

Though in principle the same incentives can be granted to national and regional investments, they should be granted under the condition that they benefit the investor and not the foreign treasury as outlined above. Treaties to avoid double taxation, while securing a substantial tax jurisdiction for the source state and the granting of the sparing credits by the state of residence, can be concluded primarily with France and also with Japan, the F.R.G., and the U.K. but not with the U.S.A.

Chapter 5 Recommendations

The concrete recommendations from the observations made in Chapters 2, 3 and 4 can be grouped as follows:

A. Concept of income

a. Interest, including bonus payments, received on saving accounts, deposits and bonds issued by non-related parties, should be excluded from taxable income of individuals and companies.

b. Capital gains realised on the disposal of securites should be excluded from taxable income of individuals. Capital gains on luxurious or a real estate should be included. The cut-off point luxurious - non-luxurious should be determined in accordance with national standards but should be regionally approved.

Capital gains realised on the disposal of machinery and equipment should be excluded from taxable income of individuals and companies, capital gains being defined as the value of the asset at the moment of disposal minus the original cost of acquisition plus the maximum amount of depreciation should be normally allowed. This definition of capital gains requires regional agreement on a set of "normal" depreciation allowances on various categories of assets. Moreover, tax authorities must reserve the right to adjust taxable income if capital gains are realised through transactions between related parties;

c. Intercorporate dividends should be excluded from the taxable income of the recipient company. This exemption implies first of all that the received dividends are excluded from taxable income of the parent company. Secondly, the parent company should be allowed to credit the withholding taxes on received dividends against its own tax liability. If withheld taxes exceed tax liability there should be a refund (see D.b.).

d. Regionally source investment income originating in a country other than the beneficiary's country of residence should be excluded from taxable income. In the case of dividends, the exemptions partly compensate the absence of an indirect tax credit for corporate taxes paid in countries belonging to the West African region, other than the shareholder's country of residence. See also at C.b. exemptions.

B. Deductions

a. Mortgage interest paid in relation to owner occupied non-luxurious housing should be deductible from taxable income of individuals. The cut-off point, luxurious - non-luxurious should be determined in accordance with national standards subject to regional approval.

b. Contributions to social security and insurance schemes, in particular pension funds and health - and unemployment insurances should be deductible from taxable income of individuals and companies. There is no objecttion against the condition of prior approval of eligible schemes.

c. All expenses necessarily incurred in the production of income including interest, royalties and fees for technical, administrative and managerial services, should be deductible from taxable income of individuals and companies, irrespective of whether paid to domestic or foreign recipients, but provided that a mechanism is created for the adjustment of "transfer prices" for transactions between related parties.

d. Costs of depreciation of capital assets should be deductible from gross taxable income of individuals and companies at a moment which they can choose freely. Nevertheless, West African countries should agree on a uniform system of maximum annual depreciation rates for various categories of assets in order to apply the capital gains exemptions recommended above (A.b.). In addition, investment allowances of up to 20% of the costs of new plant, machinery and equipment should be available, provided that the benefits accrue directly to the investor.

e. Losses should be fully deductible from taxable income of individuals and companeis. Foreign branch losses and capital losses on securities should be deductible from taxable income of companies. Investors should be allowed to an indefinite carry forward of losses incurred in previous years.

C. Tax Rates

a. A general corporate income tax rate of 40% should apply. Reduced rates of 25%, however, should apply to small, local, labour intensive companies in order to compensate the bias towards capital intensive ways of production of the recommended incentive measures.

b. A dividend withholding tax should be imposed at a rate of 10%. intraregional dividend flows, however, should be exempt from dividend withholding tax.

c. Witholding taxes on interest and royalty payments to non-residents should be imposed to such extent that no double taxation occurs and that costs of producing the income are taken into account, whereas maximum revenue for West African countries is assured. The additional objective of easy access to capital and technology should also be served. This implies a withholding tax rate of 25% (or less for some debts).

D. Tax Credits

a. Dividend withholding taxes should be creditable against the tax liability of individuals. If the tax withheld exceeds the tax payable a refund should be given. In addition, resident individuals should be granted a credit with refund for a portion of corporate income taxes paid in relation to dividends received. The extent of the credit as well as the moment of introduction should be uniformly determined at regional level.

b. Intercorporate dividends should be exempt from taxable income of recipient companies. Companies should be granted a credit with refund for withholding taxes paid in respect of received dividends.

c. individuals and companies should be granted a credit for withholding taxes on royalties and interest. If the tax withheld exceeds the tax payable a refund should be available.

d. Investors should receive a tax credit for certain labour related costs including 25% of first year costs of newly hired permanent (= 5 years staying) employees and 50% of costs related to vocational training and education such as salaries of teaching personnel and cost of buildings and equipment. The credit should be granted on the condition that the benefits accrue directly to the investor.

e. In schedular tax systems, credits should be available to prevent inter-schedular double taxation of investment income. Industrial and commercial profits realised in unincorporated form are taxed under the schedule of industrial and commercial profits (BIC) and under the general income tax for individuals (IGR). These profits should be fully included in income for IGR and a credit with refund should be granted for BIC paid.

E. Miscellaneous incentives

a. Tax holidays should only be granted under strict conditions, for selective purposes and within the framework of a regional development policy. Existing tax holidays should be suspended until regional agreement has been reached. All other incentives should be repealed.

b. Tariff concessions should only be granted within the framework of a common customs tariff and existing concessions should, therefore, be repealed until regional agreement has been reached.

The above mentioned recommendations are applied in detail to the six selected countries in the following chapters.

On a number of subjects this study recommended further discussion by the tax authorities within the region. These subjects partly relate to the recommendations and partly concern recommended policies to be established in the near future. The following subjects were mentioned:

1. Subregional agreement should be reached on a common definition of luxurious housing (see A. b. and B.a).

2. Subregional agreement should be reached on a common set of normally allowed maximum rates of depreciation of capital assets in order to be able to determine the amount of exempt capital gains (see A.b. and B.d).

3. Subregional agreement should be reached on the extent of and moment of introduction of the partial integration of corporate and individual income taxes (see D.a.).

4. Subregional agreement should be reached on a common development policy and the selective use of tax holidays (see E.a.).

5. Subregional agreement should be reached on the establishment of a common customs tariff and the selective use of tariff concessions (see E.b.).

6. Subregional agreement should be reached on one common tax policy towards Trans-national corporations. Together with the harmonized investment incentive policies this could result in a regional investment code.

7. Subregional agreement should be reached on one common approach towards the main capital exporting countries. A regional model convention for the negotiation of tax treaties would be desirable.

8. An overall integration of schedular and global income tax systems of the region should be a subject of future concern. In combination herewith the appropriate rate structure for individual income taxes and the allowance of personal deductions could be studied.

Chapter 6 Tax treatment of investments and investment income in selected West African countries

(1) Liberia

Details on the tax treatment of investments and investment income can be found mainly in the Revenue and Finance Law 1977 (hereinafter RFL), various Administrative Regulations (hereinafter AR), the Investment Incentive Code 1973 (hereinafter IIC) and the Liberian Industrial Free Zone Authority 1975 (hereinafter LIFZA). In general, individuals and corporations are not treated separately.

Detailed descriptions of the investment rules and the tax system can be found in Sections A and B of the country survey on Liberia as included in Annex 2 of this study. It will be clear from that description that a draft Investment Promotion and Development Code (hereinafter IPDC) is presently being considered as a replacement of the IIC 1973.

In this chapter the system as presently in force in Liberia will be evaluated in the light of the recommendations as summarised above in Chapter 5. Where appropriate, references will be made to the draft IPDC.

A. Concept of Income

a. Interest income is generally included in the taxable income of resident individuals and corporations but excluded is interest on Government bonds. Moreover, during the field study mission, the Commissioner of Taxes indicated that interest on savings is generally not included in taxable income. Nevertheless the existing situation is not entirely in accordance with the recommended exemption of interest and bonus payments on saving accounts, deposits and bonds issued between related parties. Sections 11.21, 11.22 and 11.24 RFL should be amended.

b. Capital gains on the disposal of property (whether real or personal, tangible or intangible) are included in gross income. Under certain circumstances, notably when the gain is used to repurchase similar property, however, the gain is not taxable.

The existing situation can be identified as an obstacle to productive investment. It is recommended that gains on securities (individuals), machinery and equipment are excluded. Included should be capital gains on the disposal of prestigious and luxurious real estate, i.e. real estate with a value exceeding a certain amount (cut-off point for luxurious - non-luxurious) to be determined by the tax authorities in accordance with national standards. Sections 11.44 and 11.45 RFL should be amended and a new Section 11.25 RFL should be included to provide for the recommended exemptions.

c. Dividends are generally included in the income of resident shareholders. There is neither relief for economic double taxation nor an exemption for inter-corporate dividends. The existing situation can be identified as an obstacle to investment and a new Section 11.26 RFL should be introduced or Section 11.53 RFL should be amended so as to exclude intercorporate dividends from the taxable income of corporate recipients. (See D.b.).

d. Foreign source investment income is generally included in taxable income of both individuals and companies. Relief is granted against double taxation by way of foreign tax credit. (Section 11.13 RFL).

This can be identified as an obstacle to intraregional investments. It was recommended to exempt West African source investment income from taxable income of residents. Consequently Section 11.21 should be amended to the effect that West African source branch profits, dividends, interest and royalties accruing to Liberian persons are not included in taxable income.

B. Deductions

a. There is no specific provision for the deductibility of interest on loans for non luxurious housing. Section 11.33 RFL should be amended to that extent by introducing a second sub-section.

b. In general, all expenses necessary for the production of income are deductible but no express mention is made of contributions to pension funds, health and unemployment insurances. A sub-section should be added to section 11.31 expressly allowing the deduction of such contributions.

c. In the definition of all "ordinary" and "necessary" expenses which are deductible, interest payments are included if regarded as a payment with respect to an obligation properly regarded as an indebtedness. Royalties, technical, administrative and management fees are not included in the list of deductible expenses but are in practice deductible irrespective of whether paid to residents or non-residents.

A general clause (Section 11.43 ARI) enables the Minister of Finance to adjust the tax liability in the case of non-arm's-length transactions between related persons.

The existing situation is in accordance with the recommendation on deductibility of expenses. Nevertheless, it is proposed that Section 11.31 d be amended in order to include royalties and fees in the listing of deductible expenses.

d. Depreciation of capital expenditure is allowed in accordance with the straight line method and up to maxima indicated in AR 2.

The existing situation is not in accordance with the proposed incentive package of depreciation at choice combined with investment allowances of up to 20% of new plant, machinery and equipment.

Consequently, Section 11.31 and AR.2 should be amended to the effect that depreciation at choice is allowed. Moreover, the accelerated depreciation proposed in the draft IPDC should be deleted. Finally, a new section should be inserted in the FRL in order to grant investment allowances of up to 20% of capital expenditure on new plant, machinery and equipment but provided that the benefits of this allowance directly accrue to the investor.

e. Losses are deductible from gross income and may be carried forward for up to 5 years. The existing situation can be identified as an obstacle to investment. Section 11.5 FRL should be amended to the effect that losses may be carried forward indefinitely.

C. Tax rates

a. Liberia has a progressive corporate tax rate which varies from 20% to 50% with the size of income. During the field study mission it was explained that the lower rates for the lower incomes were to provide a stimulus for small and medium sized companies. However, the size of a company not always corresponds with the size of income.

The existing situation is not in accordance with the recommended rate of 40%. Consequently Section 11.1. sub-section 3 should be amended. Also a new sub-section 4 should be inserted to introduce a reduced rate of 25% for small local, labour intensive companies, the definition of which should be subregionally determined.

b. A dividend withholding tax of 15% is imposed on dividends paid to non-residents. Section 11.84 RFL should grant an exemption to intraregional dividends and should be amended to reduce the witholding tax to the recommended 10%.

c. Withholding taxes on interest and royalties are generally 30% which comes near to the recommended 25%. A reduced rate, however, applies to interest paid to "public lending institutions" which include commercial banks, saving banks, insurance companies and similar institutions. (reduced rate of 15%). Section 11.84 sub-section 2 should be amended.

D. Tax credits

a. Dividends received by resident individuals are included in taxable income. Withholding taxes are only levied on distributions to non-residents. There is no integration of corporate and individual income tax; individuals do not receive a credit for corporate taxes paid in respect of received dividends. This can be identified as an obstacle to investment. Consequently, a new Section 11.14 FRL should be inserted to the effect that resident individual shareholders are allowed to credit against their income tax (a part of) corporate taxes paid by the distributing company.

b. Dividends received by resident companies are included in taxable income but no withholding tax is imposed. Therefore, no credit is required but an exemption of intercorporate dividends should be inserted in a new section 11.25. If withholding taxes in the future will be imposed irrespective of whether the payments are made to residents or non-residents a credit should be available to resident shareholders for such withholding taxes.

c. There are no withholding taxes on interest and royalty payments to residents and therefore no credit is required. If such withholding taxes are introduced in the future, however, section 11.11. should provide for a credit with refund. The recommended package of incentives included tax credits for labour related costs notably 25% of first year costs of newly hired permanent (5 year) employees and 50% of training costs, but provided that the benefits accrue directly to the investor. At present no such tax credits are granted and new sections should be inserted in the FRL to provide for them.

E. Miscellaneous

a. The recommended package of incentives included depreciation at choice, investment allowances, tax credits for labour related costs and reduced rates for small, local and labour intensive companies. In addition, conditional tax holidays could be granted for selective purposes as defined within a subregional development policy.

In Liberia a 50% reduction of income tax is granted to all approved investors for a period of 5 years. Profits reinvested into fixed assets are fully exempt from income tax. No specific conditions are attached to this "tax holiday" and reinvestment allowance.

The draft IPDC provides for a tax holiday up to 7 years and for an additional 2 year exemption from corporate income tax on reinvested profits. Neither the existing nor the proposed situation is in accordance with the recommended conditional tax holiday for selective sectoral and geographical priorities as sub-regionally established. Consequently, Section 5(2) a and b IIC 1973 and Sections 4 and 5 draft IPDC 1984 should be suspended and no holidays should be granted unconditionally and without agreement at a regional level.

b. Tariff concessions should be granted only within the framework of a common customs tariff. Consequently, Section 5(1), 5(3) and 6, IIC should be amended. Section 4, 5(a) and 7 draft IPDC should not be introduced. Finally, the LIFZA should be repealed until subregional agreement has been reached on the use of free zones.

II. Nigeria

Details on the tax treatment of investments and investment income are spelt out in various Nigerian laws.

Income tax is imposed on individuals under the Income Tax Management Act 1961 (hereinafter ITMA), and on companies under the Companies Income Tax Act 1979 (hereinafter CITA). Companies engaged in the petroleum sector are taxed separately under the Petroleum Profits Tax Act 1959 (hereinafter PPTA). Since 1967 a special set of rules, the Capital Gains Tax Act 1967 (hereinafter CGTA), applies to all capital gains.

Investment related legislation in Nigeria both regulates and attempts to attract private investment. The major instrument for attraction of investment is the Industrial Development (Income Tax Relief) Decree 1972 (hereinafter IDE) but tax incentives are also available through other laws. Detailed descriptions of the investment rules and the tax system can be found in sections A and B of the country survey on Nigeria as included in Annex 2 to this study.

In this chapter, the system as presently in force in Nigeria will be evaluated in the light of the recommendations as summarised above in chapter 5.

A. Concept of income

a. Interest income is generally included in the taxable income of individuals and corporations. Excluded for both, however, is interest paid by the Federal Savings Bank. For individuals, interest received on Nigerian Savings Certificates or paid by the Nigerian Post Office Savings Bank is also excluded. Furthermore, interest paid on specified Government bonds and loans to non-residents is excluded from taxable income. Finally, interest on foreign loans in excess of ₦ 150.000, interest on loans for the purpose of manufacturing for exports and interest on loans granted for agricultural purposes is, wholly or partly, exempt from tax depending on the maturity term of the loan (See country survey, Nigeria, section B, 4.2.). Interest accruing to both companies and individuals is liable to deduction at source at 15%, unless paid by banks. For non-redidents, the withholding tax is a final tax.

Exemptions of interest income in Nigeria favour saving with public institution and lending to agricutlural and export oriented activities. Partly therefore, the exemptions are likely to be used to finance the public sector, thereby subtracting capital for private investment from the private sector. Partly, the exemptions are used selectively for certain economic sectors. The existing situation can be identified as an obstacle to investments. It is recommended to exempt all interest payments on saving accounts, deposits and bonds issued by non related parties, including bonus interest, accruing to residents, from taxable income and to delete the specific exemptions as presently in force. Interest payments to non-residents should remain taxable by withholding tax (see below). Consequently, the specific exemption for foreign loans should be deleted. The relevant provisions, sections 9, 19 and Third schedule CITA, section 16 and Third Schedule ITMA should be amended.

b. Capital gains are separately taxed at a rate of 20%. They are widely defined as any gain on the disposal of assets including options, debts, foreign currency, property and, since 1972, stocks and shares of every description. Gains realised on the disposal of Nigerian Government securities and on the

disposal of an individual's only or main private dwelling-house are exempt, but gains on disposal of productive assets, notably machinery and equipment, are taxed. There is, however, a provision for the deferral of the capital gains tax in the case of the replacement of business assets. The realised gain on the disposed asset is disregarded and the book value of the new asset is reduced accordingly.

The existing situation can be identified as an obstacle to productive investment. It is recommended that gains on disposal of securities by individuals be excluded and that the 1972 amendment of sections 3 and 31 CGTA be reversed. It is also recommended that, instead of deferring the tax, gains on disposal of machinery and equipment be exempt. This requires amendment of section 32 CGTA. Finally, it is recommended that capital gains on disposal of prestigious and luxurious real estate be included in taxable income and taxed at normal rates. Section 36 CGTA should therefore be amended to the effect that the exemption only applies to housing below a certain value (cut-off point luxurious-non luxurious). Gains realised on the disposal of housing with a higher value should be included in taxable income and taxed at normal income tax rates instead of preferential capital gains tax rates (section 4 ITMA).

c. Dividends received by individuals and companies were generally included in taxable income. The gross amount of intercorporate dividends, i.e. the amount before deduction of withholding tax, was generally included in the taxable income of the receiving resident company (section 9 and 15 CITA), but excluded were stock dividends and dividends out of pioneer profits. As of January 1985, however, all after withholding tax dividends received by resident companies are regarded as franked investment income and are not included in taxable income. Upon redistribution of the profits, the redistributing company may even offset the withholding tax paid on the received dividends against the withholding tax on redistributed profits (section 59 B CITA).

The distributing company must withhold tax at 15% of gross amounts which is a final tax for non-resident recipients (sections 59 and 16a CITA). In addition, the distributing company must withhold tax at 45% of the gross amount of dividends paid out of exempt, read pioneer, profits, irrespective of whether such dividends were paid to residents or non residents (section 16b CITA).

The situation which exists since January 1985, therefore comes close to the recommended exemption of intercorporate dividends from taxable income in order to avoid multiple economic taxation of dividends. The only difference is the allowance of a credit of dividend withholding tax paid by the subsidiary, not against general tax liability in respect of redistributed profits. This will be further discussed under D.b..

d. Foreign source investment income is generally included in taxable income of both individuals and companies, if it is brought into or received in Nigeria. Relief is granted against double taxation by way of a foreign tax credit. In practice, foreign source investment income is never being assessed.

The legal situation, however, can be identified as an obstacle to intra-regional investments. It was recommended to exempt West African source investment income from taxable income of residents. Consequently, Sections 4, 10, 16 and the Third Schedule to the ITMA and Sections 8, 11, and 19 CITA should be amended to the effect that West African source branch profits, dividends, interest and royalties accruing to Nigerian individuals and companies are not included in their taxable income. The exemption should, of course, not apply to Nigerian source investment income.

B. Deductions

a. Interest on loans for developing an owner-occupied residential house is deductible for individuals provided the value of such property does not exceed ₦ 100,000. The existing situation is in accordance with the recommended deductibility of mortgage interest on non-luxurious housing.

b. Contributions to social security schemes are in general not deductible except for contributions to approved pension funds and retirement schemes as well as premiums paid by individuals for the insurance of his life and that of his wife. The allowed deductions are more limited than the recommended deductibility of all contributions to provident funds or retirement schemes, national health programs and unemployment insurances. The existing limits are an obstacle to savings and investment and consequently sections 17, 18 and Fourth Schedule ITMA and section 20 CITA should be amended. There is no objection, however, against the requirement of prior approval of the schemes if such approval depends on objective criteria of trustworthiness and efficiency.

c. All expenses, 'wholly, exclusively, necessarily and reasonably" incurred in the production of income are deductible in computing taxable income. These generally include interest, royalties, technical and administrative fees, irrespective of whether they were paid to residents or non-residents. Excluded, since January 1985, are management fees in excess of amounts allowed by the Minister for Finance. Also excluded are expenses incurred outside Nigeria for and on behalf of a company unless specifically allowed by the Board of Inland Revenue.

A general clause enables the Federal Board of Inland Revenue to adjust the tax liability in the case of artificial or fictitious transactions including transactions which have not been carried out at arm's length.

The existing legal situation is in accordance with the recommendation on deductibility of expenses. There is no objection against the requirement of prior approval of management fees as a measure to combat tax evasion and avoidance in addition to the general clause concerning transfer prices.

d. Depreciation of capital assets is expressly disallowed as a deduction in the income tax system of Nigeria. However, in respect of capital expenditure a system of allowances is provided for, which effectively amounts to a depreciation allowance. Since early 1985 initial and annual allowances in respect of capital expenditure are the same for individuals and companies. In addition to normal capital allowances an investment allowance is granted for agricultural capital expenditure and a so called reconstruction investment allowance is available.

The maximum amount of all allowances in one year is 100% of assessable income for agro-allied industries; 75% for manufacturing industries and 66 2/3% for all other business. For petroleum companies a separate arrangement exists (see section B.2.8.6.5.c.).

The existing situation is not in accordance with the proposed incentive package of depreciation at choice combined with investment allowances of up to 20% of cost of new plant, machinery and equipment. Consequently, sections 17, 18 and Fifth Schedule ITMA, section 20, 22 and Second Schedule CITA and sections 10, 11 and Second Schedule PPTA should be amended to the effect that depreciation at choice is allowed. Morecver, the Finance Act 1979 and section 27 CITA should be repealed in so far that they grant investment allowances for capital expenditure. Furthermore, the limitations on the maximum amount of annual allowances as introduced in Schedule 5 in 1985 should be repealed. Finally, a new section should be inserted in the ITMA, CITA and PPTA, in order to grant investment allowances of up to 20% of capital expenditure on new plant, machinery and equipment but provided that the benefits of this allowance directly accrue to the investor.

e. Losses incurred in any trade or business in the preceding years of assessment are deductible. Unabsorbed losses may be carried forward for up to 4 years. The existing situation can be identified as an obstacle to investment. Sections 21 ITMA, 26 CITA and 14 PPTA should be amended to the effect that losses may be carried forward indefinitely.

C. Tax rates

a. The general corporate tax rate is 45% which is not consistent with the recommended 40%. Consequently, section 28 CITA should be amended. In addition, a new paragraph should be added to section 28 CITA to introduce a reduced rate of 25% for small local labour intensive companies. The exact definition of "small companies" should be subregionally determined.

b. The dividend withholding tax rate is 15% irrespective of whether the dividends are paid to residents or non-residents, which is not consistent with the recommended 10%. Consequently, section 59 B should be amended.

c. Withholding taxes on interest and royalties are 15% which is inconsistent with the recommended rate of 25%. The recent unilateral reduction of withholding tax rates in Nigeria in effect transfers revenue resources from Nigeria to the capital exporting countries as far as payments to non-residents are concerned.

Section 59 CITA should therefore be amended.

D. Tax credits

a. Dividends received by individuals are included in taxable income to the amount before withholding tax. The witholding tax may be offset against any tax payable and where the amount to be set off exceeds the tax payable the excess is refundable. This tax credit is in accordance with the recommendations but on the other hand no tax credit is granted for corporate taxes paid by the distributing companies. This can be identified as an obstacle to national and intra-regional investments. Consequently, section 26 ITMA should be amended to the effect that individuals receive a credit against income tax payable for (a part of) corporate taxes paid. The extent of and moment of introduction should be regionally agreed.

b. Dividends received by companies are not included in taxable income. Upon redistribution of the profits the receiving company may offset the withholding tax paid in respect of the received dividends against the withholding tax to be paid on the redistributed profits. The existing situation can be described as a deferred credit conditional on redistribution. Both the deferral and the condition of redistribution negatively affect corporate savings and can be identified as an obstacle to investment. Consequently, section 59B CITA should be amended to the extent that corporate shareholders receive a credit against their tax liability for the withholding taxes in respect of dividends received and a refund if taxes withheld exceed taxes payable.

c. Section 59 CITA and a new section in ITMA should provide for a credit with refund for withholding taxes paid in respect of interest and royalty payments to residents.

d. The recommended package of incentives included tax credits for labour related costs notably 25% of first year costs of newly hired permanent (= 5 years) employees and 50% of training costs, but provided that the benefits accrue directly to the investor.

At present no such tax credits are granted and new sections should be inserted in the ITMA, CITA and PPTA to provide for them: on the condition that the benefits directly accrue to the investor.

E. Miscellaneous

a. The recommended package of incentives included depreciation at choice, investment allowances, tax credits for labour related costs and reduced rates for small local, labour intensive companies. In addition, conditional tax holidays could be granted for selective purposes as defined within a regional development policy.

In Nigeria a 3-year tax holiday is granted to pioneer industries. Partly, however, the exemption from corporate income tax of pioneer profits is annulled by the recently introduced requirement that a 45% withholding tax be levied on distributions out of exempt profits. This measure stimulates companies to retain profits. It may be seen as a deferral of corporate income tax until profits are distributed. This situation is not in accordance with the recommended conditional tax holiday for selective sectoral and geographical priorities as regionally established. Consequently, the IDD 1972 should be repealed until further notice and the required 45% withholding tax should be deleted (section 16B CITA).

b. Tariff concessions should be granted only within the frame-work of a common customs tariff. Consequently, the Customs (Draw Back) Regulation 1959, refunding import duties upon re-export should be repealed until regional agreement is reached.

III. Sierra Leone

Details on the tax treatment of investments and investment income are spelt out in various laws. Income tax is imposed on individuals and companies under the Income Tax Act 1959 (hereinafter ITA), as amended. Investment related legislation includes the Development of Industries Act 1983 (hereinafter DIA), and the Tourist and Hotel Development Act 1964 (hereinafter THDA).

Detailed descriptions of the investment rules and the tax system can be found in Sections A and B of the country survey on Sierra Leone as included in Annex 2 to this study.

In this chapter the system as presently in force in Sierra Leone will be evaluated in the light of the recommendations as summarized above in Chapter 5.

A. Concept of income

a. Interest income is generally included in the taxable income of individuals and corporations. Excluded for both, however, is interest paid by the Sierra Leone Post Office Savings Bank. In addition, interest payable on all government stocks is exempted by public notice (3 of 1980).

Exemptions of interest income in Sierra Leone favour saving with public institutions, thus decreasing capital available for private investment. The existing situation can be identified as an obstacle to private investment. It is recommended: to exempt interest including bonus interest, on savings and bonds issued by unrelated parties and to delete the more specific exemptions as presently in force. Interest payments to non-residents should remain taxable by withholding tax (see C.c.). Consequently, articles 7 and 9 ITA should be amended.

b. Capital gains are generally included in taxable income without exceptions. The existing situation can be identified as an obstacle to investment. It is recommended: to exclude the gains on securities (individuals), machinery and equipment. It is also recommended to include gains on the disposal of luxurious real estate and to tax them at normal rates. Articles 7 and 9 should be amended to that extent.

c. Dividends received by individuals and companies are generally included in taxable income. There is neither relief for economic double taxation nor an exemption for intercorporate dividends.

The existing situation can be identified as an obstacle to investment and Article 7 ITA should be amended to the effect that intercorporate dividends are excluded from taxable income.

d. Foreign source investment income is legally included in taxable income of both individuals and companies. Relief is granted against double taxation by way of foreign tax credit. In practice, however, foreign source investment income is never assessed.

The legal situation is not in accordance with the recommended exemption of West African source investment income from taxable income of residents. Consequently, Articles 7 and 9 ITA should be amended to the extent that West African source branch profits, dividends, interest and royalties accruing to residents of Sierra Leone, are exempt.

B. Deductions

a. In general, interest payments are deductible as expenses but interest on loans for owner occupied, non-luxurious housing is not as such mentioned. An extra subsection should be added to Article 10ITA.

b. Contributions to social security and insurance schemes are generally not deductible but an important exception exists for employer's contributions to approved pension schemes and up to a certain maximum.

It is recommended that Arts, 10 11 and 85 ITA be amended to allow the deduction of all contributions to pension, health and unemployment schemes.

c. All expenses wholly and exclusively incurred in the production of income are deductible in computing taxable income. Expressly allowed as deductions are interest payments, provided that the interest received by the beneficial owner is subject to income tax in Sierra Leone or exempt in accordance with the law. This condition, however, does not apply if either the beneficial owner is a bank engaged in business in Sierra Leone or if the interest is paid on a loan granted and used outside Sierra Leone to acquire income which is taxable in Sierra Leone.

Generally deductible, but not expressly mentioned are royalties and technical, administrative and management fees. Management fees paid to non-resident directors of a non-resident parent company (controlling interest), however, are limited to certain maxima.

A general clause (Article 11 (k) ITA) enables the Commissioner of Income Tax to disallow the deduction of expenses incurred outside Sierra Leone unless he is convinced that appropriate consideration is given for the services delivered. Moreover, Article 19 ITA allows the Commissioner to disregard artificial or

fictitious transactions and dispositions. The existing situation is largely in accordance with the recommended deductibility of expenses. However, express mention should be made of royalties and fees as deductible expenses. Also allowed should be the deduction of fees paid to non-resident directors of related companies in excess of the maxima stipulated in the law, provided that the fees represent appropriate consideration for the services rendered. Articles 10 and 11 ITA should be amended to this extent.

d. Depreciation of capital expenditure is disallowed save as prescribed by the Third Schedule (see Annex 2). The existing situation is not in accordance with the proposed incentive of depreciation at choice combined with investment allowances of up to 20% of new plant, machinery and equipment. Consequently, sections 10, 11 and the Third Schedule ITA should be amended to the effect that depreciation at choice is allowed. The accelerated depreciation and investment allowances provided by Articles 10(c) and 15 DIA should be repealed. A new subsection should be added to Article 10 ITA in order to provide for investment allowances of up to 20% of capital expenditure on new plant, machinery and equipment, but provided that the benefits of this allowance directly accrue to the investor.

e. Losses are deductible from gross income and may be carried forward for up to six years. This is not in accordance with the recommended indefinite carry forward of losses and Article 22 ITA should therefore be amended.

C. Tax rates

a. The general corporate tax rate is 55% which is not in accordance with the recommended 40%. Consequently, Article 28 ITA should be amended. In addition, a new subsection should be added to introduce a reduced rate of 25% for small locally owned, labour intensive companies. The exact definition of "small" companies should be regionally determined.

b. The dividend withholding tax for non-residents is 55%. This, however, replaces the normal corporate tax because dividends paid generally are not subject to corporate tax. Therefore, Articles 28 and 31 should be amended to the effect that all corporate profits are subject to 40% income tax and that an additional 10% dividend withholding tax is levied irrespective of whether the dividends are paid to residents or non-residents, but intraregional dividends should be exempt.

c. Withholding tax on royalties is levied at 10% of the gross amount, which is inconsistent with the recommended 25%. Consequently, either Article 31A ITA should be amended or the Commissioner should use his discretion to introduce a 25% rate for royalty payments. Withholding tax on interest is levied at 55% which is not consistent with the recommended 25%. Consequently, either Article 31 ITA should be amended or the Commissioner should use his discretion to introduce a 25% rate for interest payments.

D. Tax credits

a. Dividends received by individuals are included in taxable income but a credit is granted for the tax withheld at source, which in effect implies that individual resident shareholders receive a full credit for the corporate tax paid in respect of received dividends. This complete integration of corporate and individual income tax is, however, not in accordance with the recommended partial removal of economic double taxation of dividends. Moreover, there is no provision for a refund if the tax withheld exceeds the tax payable. Consequently, upon reaching agreement at regional level on a uniform imputation system, Article 32 ITA should be amended.

b. There is no specific exemption for intercorporate dividends and in the existing situation there is no need for it because distributed profits are not subject to tax and the tax withheld is fully creditable. In the recommended situation, however, a 40% corporate income tax will be levied on all profits and an additional 10% dividend withholding tax will apply. Therefore a new subsection will be needed in Article 9 ITA to exempt intercorporate dividends from the taxable income of the recipient. In addition, Article 32 should provide for a credit with refund for dividend withholding taxes paid.

c. Article 32 should also provide for a credit with refund for the recommended withholding taxes on royalties and interest payments.

d. The recommended package of incentives included tax credits for labour related costs, notably 25% of first year costs of newly hired (5 years) employees and 50% of training costs, but provided that the benefits accrue directly to the investor.

At present, approved industrial establishments are entitled to a deduction of training expenses. There are no credits available for labour related costs. Therefore, new provisions should be inserted in the ITA or DIA to provide for them.

E. Miscellaneous

a. The recommended package of incentives included depreciation at choice, investment allowances, tax credits for labour related costs and reduced rates for small, local, labour intensive companies. In addition, conditional tax holidays could be granted for slective purposes as defined within a regional development policy.

In Sierra Leone special relief is granted under ITA for companies whose annual income does not exceed LE6,000. They receive a tax holiday of 100%, 66 2/3% 66 2/3% and 33 1/3% in the first, second and third year of operation. In addition, industrial projects approved under the DIA are entitled to a 5 year tax holiday to a maximum amount of 150% of capital originally invested. However, net profits earned during the tax holiday period must be credited to a special reserve account which may only be used for reinvestment. Therefore, the tax holiday in effect is a reinvestment reserve.

Neither the temporary relief for small companies nor the "tax holiday" for approved projects is in accordance with the recommended conditional tax holiday for selective sectoral and geographical priorities as regionally established. Consequently, Articles 29 ITA, 10(d) (e), 16 and 29 DIA should be suspended until regional agreement has been reached on the use of the holidays.

b. Tariff concessions should be granted only within the framework of a common customs tariff. Consequently, Articles 10(b), 11(b) and 28 DIA should be suspended until regional agreement has been reached on the use of tariff concessions.

IV. Guinea

Details on the tax treatment of investments and investment income are spelt out in various laws. It must be pointed out from the outset that in the past 25 years none of these laws were widely applied in practice because of the dominant role of the public sector in the Guinean economy. A renewed application of these laws can, however, be expected because of the gradual revival of the private sector.

Schedular income taxes are imposed on various categories of income, irrespective of whether the recipient is an individual or a company, under the Code Général des Impôts 1966. A copy of this law could not be obtained. The following survey is therefore necessarily limited. It is based on a general survey of the Guinean tax system which was prepared by the International Bureau of Fiscal Documentation (Amsterdam) and amended and approved by the Ministry of Finance in Guinea. (See Annex 2). The main schedular income taxes include the tax on industrial and commercial profits (hereinafter BIC), the tax on non-commercial profits (hereinafter BNC), the tax on wages and salaries (hereinafter ITS) and the tax on income from movable property (hereinafter IRVM). For individuals a general income tax (hereinafter IGR) is imposed on aggregate income at progressive rates and in addition to the various schedular taxes. Investment related legislation in Guinea includes the Investment Code 1984 (hereinafter IC) and its implementing decrees (not yet published). A more detailed description of the applicable investment rules and the tax system can be found in Sections A and B of the country survey on Guinea as included in Annex 2 of this study.

In this chapter, the system as presently in force will be evaluated in the light of the recommendations as summarised above in Chapter 5.

A. Concept of income

a. Interest paid is theoretically taxed under IRVM at various rates. Interest income received is generally included in taxable income for BIC and IGR. During the field study mission, however, it was stated by the Ministry of Finance that interest payments on private savings are exempted from taxable income. In addition it must be realised that there are in practice no privately issued or owned securities and loan instruments. This situation may change, however, in the future. The IC therefore, provides for an exemption from all taxes for interest payments on loans approved by the national investment commission.

The existing situation is not in accordance with the recommended exemption of interest on savings and bonds issued by unrelated parties and the CGI should be amended to this extent.

b. Capital gains are generally included in taxable income for BIC and, for individuals, also in taxable income for IGR. This can be identified as an obstacle to productive private investment.

It is recommended: to exclude capital gains on securities (individuals), machinery and equipment, from taxable income. It is also recommended that gains on the disposal of luxurious real estate be included and taxed at normal rates. The relevant articles in the CGI should be amended to this extent.

c. According to the law, dividends paid are generally taxed under IRVM and dividends received are included in taxable income of individual and corporate recipients (IGR and BIC respectively). The IC, however, provides that dividends paid by companies approved under one of the special regimes are exempt from IRVM for the duration of the privileged regime. The existing situation is not in accordance with the recommended exemption of intercorporate dividends from taxable income of the recipient company and the CGI should be amended to provide this exemption.

d. Foreign source investment income is in principle not included in taxable income for BIC and this is in accordance with the recommended application of the source principle in West African countries, with respect to intraretional investment income flows. IRVM however, is imposed on distributions by Guinean companies as well as foreign companies in respect of income realised through Guinean branches. This is not in accordance with the recommended territoriality of tax jurisdiction in West AFrica. Consequently the CGI should be amended to the extent that West African companies are exempt from IRVM on distributions effected outside Guinea.

B. Deductions

a. It is recommended that individuals be allowed a deduction for interest paid on mortgages for non-luxurious housing. Such personal deductions which do not at present exist in Guinea cannot easily be introduced in BIC, BNC and ITS.

The IGR, however, can be used for personal deductions. It is recommended that the CGI be amended to the effect that the deductibility of mortgage interest is allowed on mortgages on houses below a certain value, to be determined in accordance with national standards (cut-off point luxurious - non-luxurious), but subject to subregional approval.

b. Contributions to unemployment and health insurance and pension funds are not explicitly allowed as deductions in Guinea. However, ITS allows a flat rate 5.2% deduction for income retained by employers with regard to social security. It is not clear whether IGR allows the deduction of premiums for social security schemes. It is recommended that full deduction of such contributions be allowed for ITS and IGR and BIC.

c. In general all expenses are deductible. It is recommended that a general clause be inserted in the CGI to enable tax authorities to adjust non arm's length transfer prices between related parties.

d. Depreciation of capital expenditure is deductible for the amount actually depreciated. It is not clear whether there are maximum rates for various categories of assets. If not, the existing situation is in accordance with the recommended depreciation at choice. In addition a new article should be inserted in the CGI to provide for investment allowances of up to 20% of capital expenditure of new plant, machinery and equipment but under the condition that the benefits of this allowance directly accrue to the investor.

e. Losses incurred in business are deductible. Unabsorbed losses may be carried forward for up to 3 years. The existing situation can be identified as an obstacle to investment. The CGI should be amended to the effect that losses may be carried forward indefinitely.

C. Tax rates

a. Corporate income is generally taxed under BIC at 35%. No reduced rate applies to small, labour intensive, local companies. The BIC rate for companies should be increased to the recommended 40% but a reduced rate of 25% should be introduced for small companies.

b. IRVM is withheld on dividends at 20%. A reduced rate of 10% applies to distributions of new enterprises during the first 3 years of operation. The IC further provides for an exemption from IRVM of distributions by enterprises which are approved under the one of the 3 special investment regimes. The existing situation is not in accordance with the exemption for intraregional dividend flows, and a dividend witholding tax of 10%. The CGI and IC should therefore be amended.

c. IRVM is withheld on interest at various rates (10, 20, 25%) irrespective of whether paid to residents or non-residents. This is not in accordance with the recommended 25% witholding tax on interest paid to non-residents.

Consequently,the CGI should be amended. The tax treatment of royalties is not clear. They should also be subject to IRVM at 25%.

D. Tax credits

a. Dividends received by individuals are in principle included in taxable income for BIC or IGR. It was recommended to allow individual shareholders a credit with refund for dividend withholding taxes imposed by any country in the West African region. (direct tax credit). In addition it was recommended to allow individual shareholders a credit for a (portion of) corporate income tax paid in Guinea (imputation BIC - IGR) or any other West African country (indirect tax credit).

The CGI should be amended to this extent.

b. Dividends received by companies should not be included in taxable income for BIC (See A.c.). In addition it was recommended to grant the recipient company a credit with refund against its tax liability (BIC) for IRVM withheld on the received dividends. The CGI should be amended to this extent.

c. The treatment of royalty payments is unclear. If royalty payments are subject to IRVM at 25%, as recommended, this withholding tax will be a final tax for non-residents. However, for residents, it is recommended to grant a tax credit with refund for IRVM withheld on royalty payments received. Such credit should also be granted for interest withholding taxes.

d. An extra problem in schedular tax systems is the avoidance of inter-schedular double taxation of investment income.

Profits realised in unincorporated industrial and commercial activities are at present taxable in Guinea under BIC at 30% or 20%. Remaining net income is again taxable under IGR at progressive rates. This is an extra obstacle to investments which does not occur in the Anglophone countries. It should be remedied by considering BIC on income from unincorporated activities as a pre-levy of IGR. This can be done by including gross industrial and commercial profits (before BIC) in taxable income for IGR and by granting a credit of BIC paid against the tax liability under IGR. In addition individuals should be entitled to a refund if the BIC paid exceeds the IGR payable.

Consequently it is recommended to amend the CGI to this extent.

e. The recommended package of incentives included tax credits for labour related costs notably 25% of first year costs of newly hired permanent (= 5 years) employees and 50% of training costs, but provided that the benefits accrue directly to the investor.

At present no such tax credits are granted and new sections should be introduced in (BIC) the CGI to provide for them.

E. Miscellaneous

a. The recommended package of incentives included depreciation at choice, investment allowances, tax credits for labour related costs and reduced rates for small, local, labour intensive companies. In addition, conditional tax holidays could be granted for selective purposes as defined within a regional development policy.

The Guinean IC does not generally provide for direct tax incentives other than those mentioned under A.a. and A.c. However, the special regimes B and C provide for a stabilisation of the tax regime which is not in accordance with the recommendations. Also, regime C allows the granting of tax incentives per project. Both provisions should be repealed.

b. Tariff concessions should be granted only within the framework of a common customs tariff. Consequently the tariff concessions granted by the IC should be repealed until regional agreement is reached.

V. The Ivory Coast

Details on the tax treatment of investments and investment income are spelt out in various laws.

Schedular income taxes are imposed on various categories of income, irrespective of whether the recipient is an individual or a company, under the Code Général des Impots 1959 (hereinafter CGI).

The main schedular income taxes include the tax on industrial and commercial profits (hereinafter BIC), the tax on non-commercial profits (hereinafter BNC), the tax on wages and salaries (hereinafter [illegible], the tax on income from immovable property (hereinafter IRF) the tax on income from movable property which again is split up in a tax on the income from negotiable securities (hereinafter IRVM) and a tax on the income from loans (IRC).

For individuals a general income tax (hereinafter IGR) is imposed on aggregate income at progressive rates and in addition to the various schedular taxes. For the purposes of this study the emphasis will be put on BIC, IRC and IRVM, BNC, ITS and IGR will be mentioned where appropriate.

Investment related legislation in the Ivory Coast includes the Investment Code 1984 and the 1973 law on investment in the tourist sector.

A more detailed description of investment rules and the tax system can be found in Sections A and B of the country survey on the Ivory Coast as included in Annex 2 of this study.

In this chapter, the system as presently in force will be evaluated in the light of the recommendations as summarised above in chapter 5.

A. Concept of income

(a) Interest paid is taxed under IRVM at 12% (exceptionally 18% or 25%) if it arises on negotiable securities and under IRC at 12%, 15% or 18% if it arises on loans. For certain approved loans IRC can be cut by 50%.

Exempt from IRVM and IRC are interest payments by Savings banks, the National Savings and Credit Bank, the National Agricultural Development Bank and other public finance institutions or approved organisations. Also exempt are interest payments on commercial bank accounts, interest earned by banks whose seat is in the Ivory Coast (but such interest is subject to BIC) and interest on loans made from borrowed funds which are themselves subject to tax.

Interest income received is generally included in taxable income (for BIC) of the recipient company or individual and taxed at 25% (individuals) or 40% (companies) of the net after IRVM/IRC amounts. However, 50% of the interest may be deducted from taxable income but again interest on non-negotiable securities, as well as certain financial institutions are excluded from this deduction. The deduction is increased to 90% in the case of interest income on public securities including those of the National Investment Fund. The combination of IRVM/IRC and BIC may result in a tax on interest of 12% + (40% of 88%)= 35.2% = 47.2% for recipient companies and 12% + (25% of 88%) = 22% = 34% for individuals. In addition, for individuals the after tax income is again included in taxable income for the IGR. However, exempt for IGR is interest on certain public securities and interest on securities listed on the Abidjan Stock Exchange. Moreover, IRVM paid is creditable against IGR to be paid without a right of refund (See D.a.).

The existing situation is not in accordance with the recommended exemption of interest income from savings and bonds of unrelated parties. Consequently, Articles 922, 935, 959 to 966 should be amended to the effect that interest received by residents is excluded from IRVM/IRC.

b. Capital gains are generally included in taxable income for BIC and for individuals also in taxable income for IGR. However, capital gains on assets may be excluded for BIC if the beneficiary undertakes to reinvest the gains within 3 years in capital assets (which includes acquisitions of shares in companies assuring at least a 30% holding). IN that case, the BIC is deferred because the book value of the new asset is reduced by the gain on the disposed asset.

Also excluded from taxable income for BIC and IGR are certain capital gains realised by construction companies. Furthermore, capital gains on the disposal of capital assets at the end of exploitation or in the case of a (partial) cession of the enterprise are included in BIC taxable income only for 50% (33.1/3% if more than 5 years passed between acquisition and cession).

Finally certain capital gains on the disposal of securities are only included in IGR for a third of their value and certain gains on the disposal of capital assets are excluded from taxable income for IGR provided the asset belonged to the investor for more than 5 years.

The existing situation can be identified as an obstacle to productive investment. It is recommended to exclude the gains on disposal of securities (individuals), machinery and equipment. It is also recommended to include gains on the disposal of prestigious and luxurious real estate in taxable income and to tax it at normal rates.

Consequently Articles 6(1), 8, 9 and 95 bis CGI should be amended to the extent that the deferral of BIC on capital gains on the disposal of productive assets is replaced by an exemption and that capital gains on the disposal of negotiable securities are excluded from taxable income of individuals. In addition Articles 89 and 90 should be amended to the effect that gains realised on non-luxurious housing by individuals are exempt from IGR whereas gains on the disposal of luxurious real estate are taxed at full IGR rates.

c. Dividends paid are generally taxed under IRVM at 12% but stock dividends out of the capitalisation of reserves are exempt. Also exempt are dividends distributed by approved investment companies. Dividends received from Ivorian source are in principle included in taxable income of individuals (BIC and IGR) and companies (BIC).

However, a special regime exists for certain intercorporate dividends. If an Ivorian company owns at least 10% of the share capital of another company and the shares are deposited with an approved institution, dividends received by the holding company are exempt from BIC for 95%. Also, the parent company, upon redistribution of the dividends of the subsidiary is exempt from withholding IRVM on that part which equals the after IRVM dividends received from the subsidiary.

For individuals, dividends received on securities listed on the Abidjan Stock Exchange are exempt from taxable income for IGR to a maximum of 300,000 F.CFA per issue and provided that total taxable income remains below 5 million F. CFA. Therefore, in practice all dividends are subject to 12% IRVM and some dividends are in addition subject to BIC and IGR for the after IRVM and some dividends are in addition subject to BIC and IGR for the after IRVM amount. The existing situation comes close to the recommended exemption from taxable income of dividends received from related companies by resident corporate shareholders. It is, however, recommended to generalise this exemption. Consequently, Articles 11 and 11 bis should be amended to the extent that all intercorporate dividends are excluded from taxable income of the recipient company.

The recipient company should, moreover, be allowed a credit against tax liability on other income of IRVM or similar taxes withheld (see D.a.).

d. Foreign source investment income is in principle not included in taxable income for BIC (Article 2 CGI) and this is in accordance with the recommended application of the source principle in West African countries with respect to intraregional investment income flows.

IRVM however, is imposed on distributions by Ivorian companies as well as foreign companies in respect of income realised through Ivorian branches. It is presumed that 50% of the Ivorian branch income is so (re)distributed by the foreign companies and thus taxable at 12%.

This is not in accordance with the recommended territoriality of tax jurisdiction in WEst Africa. Consequently, Art. 934CGI should be amended to the extent that West African companies are exempt from IRVM on distributions effected outside the Ivory Coast.

b. Deductions

It is recommended that individuals be allowed a deduction for interest paid on mortgages for non-luxurious housing. Such personal deductions which do not at present exist in the Ivory Coast cannot easily be introduced in BIC, BNC and ITS. The IGR, however, can be used for personal deductions and in principle all interest payments are deductible without limit. It is recommended that art.39 be amended to the effect that the deductibility of mortgage interest is allowed only on mortgages on houses below a certain value to be determined rationally but approved subregionally (cut off point luxurious - non-luxurious).

b. Contributions to unemployment and health insurance and pension funds are not completely allowed as deductions in the Ivory Coast. However, ITS allows a flat rate 6% deduction for income retained by employers with regard to pension provisions (Art.51). Moreover, IGR allows the deduction of premiums for retirement schemes and life insurances up to 6% of net income or 200,000 F.CFA. (Article 89). It is recommended that the present deductibility be extended to BIC as mentioned above and that articles 6, 51 and 89 CGI be amended.

c. In general, all expenses are deductible (Article 6). Remunerations, however, are only deductible insofar as they correspond to real services or activities. Certain costs in relation with certain foreign branches are deductible in the first 3 years provided that they are added back to taxable income in the subsequent 5 years (Article 7).

A general clause enables the Ivorian tax authorities to combat profit shifting between related parties. Moreover, interest, royalties and fees paid to non-residents are only deductible insofar as the paying person can prove that these payments reflect real benefits and are not abnormal or exagerated (Article 22). The existing situation is in accordance with the recommendations.

d. Depreciation of capital expenditure is deductible for the amount actually depreciated up to certain maximum and in accordance with the straight line method. Accelerated depreciation is allowed for new plant and equipment used in industry, transport or agriculture and for housing facilities for employees. A system of regressive depreciation may be applied upon request and approval. Articles 6 and 34 CGI should be amended to provide for depreciation at choice and investment allowances of 20% on plant, machinery and equipment.

e. Losses of preceding years are deductible for BIC and unabsorbed losses may be carried forward for 3 years, which is not in accordance with the recommendation. Consequently Articles 14, 35 CGI should be amended to the extent that losses can be carried forward indefinitely.

C. Tax rates

a. Corporate income is generally taxed under BIC at 40%. In addition, a 10% levy is imposed which, however, can be qualified as a form of forced saving. The levy can be used for reinvestment within 3 years. No reduced rates apply to small, labour intensive, local companies. The BIC rate for companies is in accordance with the recommendation but a reduced rate should be introduced for small companies through amendment of Article 27 CGI. The reduced rate for hydrocarbons should be repealed.

b. IRVM is withheld on all distributions, including dividends, at 12% which is not entirely in accordance with the recommendations. Consequently Articles 924 and 925 CGI should be amended to the extent that IRVM on dividends is withheld at 10%. Shareholders in other West African countries should be exempt.

c. IRVM is withheld on interest at 12% and BNC is imposed on royalties at (25% of 80% of gross amounts i.e.) 20% which is not in accordance with the recommended 25%. Consequently Articles 33 bis, 924 and 925 CGI should be amended.

D. Tax credits

a. Dividends received by individuals are in principle included in taxable income for BIC or IGR. However, dividends received on securies listed on the Abidjan Stock Exchange are exempt from taxable income for IGR (see A.c.). Moreover, individuals are allowed to credit IRVM withheld on investment income received, against tax liability under IGR, without right of refund. Individual recipients of dividends redistributed by the parent company out of dividends received from subsidiary companies may also credit IRVM withheld on intercorporate dividend payments, but without right of refund. The existing situation is not entirely in accordance with the recommended credit with refund. Therefore Article 93 C CGI should be amended.

In addition, it was recommended to allow individual shareholders a credit for (a portion of) corporate income tax paid in the Ivory Coast (imputation BIC - IGR). No such credit exists at present. Consequently, a new subsection should be added to Article 93 to grant individuals a credit against IGR payable for (a portion of) BIC paid in respect of dividends received. The extent of the credit and the moment of introduction should be regionally determined.

b. Dividends received by companies should not be included in taxable income for BIC (see A.c.). In addition it was recommended to grant the recipient company a credit with a refund against its tax liability (BIC) for IRVM withheld in respect of the received dividends. Such credit is not at present available in the Ivory Coast and this can be identified as an obstacle to investment.

It is recommended that a new Article 28A CGI be introduced to grant companies a credit with refund for IRVM withheld in respect of received dividends.

c. Interest received by individuals and companies has been subject to IRVM by the payer. It was recommended that most interest payments be exempt from taxable income of companies and individuals (BIC and IGR) (see A.a.).

In addition, a credit with refund should be available for IRVM withheld. Consequently new Articles 28 A and 93 D CGI should be introduced to insert credits in BIC and IGR. Royalties are subject to BNC at 25% of 80% of the gross amount i.e. 20% of gross amounts. For non-residents this is a final tax withheld at source. Resident companies and individuals pay BNC, annually, on receiving the income and filing a return. For individuals the net income is again included for IGR.

The situation is not in accordance with the recommended inclusion of royalties in income for the corporate and individual income tax while granting a credit with refund for the tax withheld. It is therefore recommended that BNC be withheld at 25% on all royalty payments, that gross royalties be included in taxable income for BIC if the recipient is a company and IGR if the recipient is an individual; and that residents be granted a credit with refund for BNC withheld. Consequently Articles 6, 33(2)(b) and 91 CGI should be amended and new Articles 28 A and 93 D should be introduced to provide for a credit with refund for BNC.

d. The recommended package of incentives included tax credits for labour related costs notably 25% of first year costs of newly hired permanent (=5 years) employees and 50% of training costs, but provided that the benefits accrue directly to the investor.

At present no such tax credits are granted and new sections should be introduced in (BIC) the CGI to provide for them.

e. An extra problem in schedular tax systems is the avoidance of inter-schedular double taxation of investment income. Profits realised in unincorporated industrial and commercial activities are at present taxable in the Ivory Coast at 25%. Remaining net income is again taxable under IGR at progressive rates. This is an extra obstacle to investments which does not occur in the Anglophone countries. It should be remedied by considering BIC on income from unincorporated activities as a pre-levy of IGR. This can be done by including gross industrial and commercial profits (before BIC) in taxable income for IGR and by granting a credit for BIC paid against the tax liability under IGR. In addition individuals should be entitled to a refund if BIC paid exceeds the IGR payable. Consequently it is recommended that Article 89(3) be amended so as to delete the deductibility of BIC and that a new Article 93 bis be inserted to introduce a credit with refund for BIC paid in respect of industrial and commercial profits realised in an unincorporated way.

E. Miscellaneous

a. The recommended package of incentives included depreciation at choice, investment allowances, tax credits for labour related costs and reduced rates for small, local, labour intensive companies. In addition, conditional tax holidays could be granted for selective purposes as defined within a regional development policy. Tax holidays are granted in the Ivory Coast under the CGI to new industrial enterprises (5 years), mineral ventures (5 years) and approved construction enterprises (25 years). Tax holidays are also granted under the IC (4-8 years). In addition reinvestment allowances are granted under the CGI (Articles 84, 85). Finally a stabilisation of the tax regime is available to large investors under the IC.

This is not in accordance with the recommended package of incentives and consequently Articles 84 CGI and 22 to 25 IC should be deleted whereas Articles 4 (6,7,8) CGI and 20 IC should be suspended until agreement is reached at regional level on the selective use of the tax holidays.

b. Tariff concessions should only be granted within the framework of a common customs tariff. Consequently Article 17 IC should be suspended until regional agreement has been reached.

VI. Senegal

Details on the tax treatment of investments and investment income are spelt out in various laws. Schedular income taxes are imposed on various categories of income irrespective of whether the recipient is an individual or a company, under the Code Général des Impôts 1976 (hereinafter CGI) as amended.

The main schedules include the tax on industrial and commercial profits (hereinafter BIC), the tax on non commercial profits (hereinafter BNC), the tax on wages and salaries (hereinafter ITS), the tax on immovable property (hereinafter IRF) the tax on income from movable property which again is split up in the tax on income from negotiable securities (hereinafter IRVM), and the tax on income from loans (hereinafter IRC). For individuals a general income tax (hereinafter IGR) is imposed in addition to the various schedular taxes on total aggregate income.

For the purposes of this study the emphasis will be put on BIC, IRC and IRVM. BNC, ITS and IGR will be mentioned where appropriate. Investment related legislation in Senegal includes the Investment Code 1981 (hereinafter IC), the Small Investment Code 1981 (hereinafter SIC) and the law on the Dakar Free Zone 1974 (hereinafter DFZ). Detailed descriptions of the investment rules and the tax system can be found in Sections A and B of the country survey on Senegal as included in Annex 2 to this study.

In this chapter the system as presently in force in Senegal will be evaluated in the light of the recommendations as summarised above in Chapter 5.

A. Concept of income

a. Interest income paid is taxed under IRVM (at 6, 10, 16 or 25%) if it arises on negotiable securities and under IRC (at 8, 16, 20%) if it arises on loans. Exempted from IRVM are interest payments on negotiable securities issued by the State, the National Development Bank and the Central Bank for Economic Co-operation (Art.141). Exempted from IRC are interest on loans contracted by the State or granted to co-operative societies and interest on loans granted by Senegalese companies using funds which they obtain from borrowings which are themselves subject to the tax on income.

Interest received is in principle included in the taxable income (for BIC) of the recipient individual or company. However, up to 70% or 90% of the net, i.e. after IRVM, income may be deducted from BIC taxable income if the interest originates in Senegal, an ECOWAS country or a country with which Senegal concluded a tax treaty and provided such income was subject to (or lawfully exempt from) IRVM (Article 12 CGI).

The combination of IRVM, IRC and BIC results in a tax of 16% on most interests and a tax of 16% + (43.1/3% of 84%=) 36.5% = 52.5% on certain interests. In addition interest income is again included in IGR for individual recipients so that the effective tax rate may even be higher. The exemptions from IRVM and IRC carry a bias against the private sector in favour of public and non-commercial activities.

Consequently, the existing situation can be identified as an obstacle to national investment. All interest, including bonus interest, on savings accounts deposits and bonds issued by non-related parties should be excluded from IRVM, IRC and taxable income for BIC and IGR and the more specific exemptions should be deleted. Interest payments to non-residents should remain taxable by withholding tax (see below). Necessary are amendements to Articles 12, 85, 141 and 165 to 170 CGI to this extent.

b. Capital gains are generally included in taxable income for BIC and again for IGR if the beneficiary is an individual. Capital gains on immovable property are taxed separately at 15% (Article 921 and following CGI). However gains on the disposal of capital assets are not included in taxable income (BIC) provided that the amount is reinvested in similar assets within 3 years and that the depreciable value of the new assets is reduced by the amount of the gain. (Article 9 CGI).

Also capital gains on the disposal of buildings in certain locations (Gorée, St. Louis) are exempt provided they are reinvested. Furthermore gains on the disposal of capital assets at the end of exploitation or upon the (partial) cession of the enterprise are included in taxable income only for 33.1/3% of the value.

Finally, certain gains realised by construction companies are exempted. The existing situation can be identified as an obstacle to productive investment. It is recommended to exclude the gains on securities (individuals), machinery and equipment. It is also recommended to include gains on the disposal of prestigious and luxurious real estate in taxable income and to tax it at normal rates.

Consequently, Articles 9, 10 and 73 CGI should be amended to the effect that the deferral of BIC on gains on the disposal of capital assets is replaced by an exemption and that gains realised on the disposal of negotiable securities are excluded from taxable income of individuals. In addition, Articles 923-924 CGI should be amended to the effect that gains realised on non luxurious housing by individuals are exempt from the special tax on capital gains on immovable property (at 15%). Articles 83 to 85 should be amended to tax gains on the disposal of luxurious real estate at normal IGR rates.

c. Dividends paid are generally taxed under IRVM at 16% but a reduced rate of 8% applies to distributions by companies benefiting from a long term fiscal regime or approved priority companies (see Section A).

Stock dividends are exempt from IRVM. Profits redistributed by Senegalese companies out of net dividend income from holdings of at least 20% in other companies (in or outside Senegal) are also exempt. However, no credit is granted for IRVM already paid on the received dividends.

Dividends received from Senegalese source are in principle included in taxable income of the shareholders and taxed under BIC and also under the IGR for individual shareholders.

However, after tax income from movable property is deductible from taxable income up to 70 to 90% if it originates in Senegal, in countries of ECOWAS or in countries with which Senegal concluded a tax treaty, and provided it has been subjected to (or lawfully exempt from) IRVM in one of these countries. So in practice dividends are subject to 16% tax when paid. Only 10 to 30% of the net amount received is included in the taxable income of the recipient company or individual for BIC. The recipient company need not withhold IRVM upon redistribution. The individual, however, must again include the net after BIC income in taxable income for IGR.

The existing situation is not in accordance with the recommended exemption of dividends received from related companies by resident corporate shareholders. Therefore Article 12 CGI should be amended to the effect that total after IRVM dividend income received by corporate shareholders would be exempt for BIC. In addition recipients should be granted a credit with refund for IRVM paid, against BIC liability on all other income items (see D.a.).

Finally Article 144 CGI should be amended to the extent that all redistribution of profits by Senegalese companies out of dividends received by any company established in West Africa, are exempt from IRVM irrespective of whether the holding falls short of or exceeds 20%.

d. Foreign source income is in principle not included in taxable income for BIC (Article 3 CGI) or other schedular taxes. This is in accordance with the recommendations but two remarks must be made.

Firstly, income from movable capital is in principle included in taxable income (BIC) but the net amount is deductible if such income arises in Senegal, an ECOWAS country or a tax treaty country and provided such income was subject to IRVM in those countries. On the contrary, if such income, arising in ECOWAS countries is not subject to or lawfully exempt from IRVM in those countries it is included in taxable income for BIC. According to the recommendations of this study investment income is generally subject to withholding taxes in the country of source. However, this is only an IRVM in the francophone countries. Therefore, Art. 12 CGI should be amended to the extent that withholding taxes imposed by ECOWAS countries on investment income are considered as similar to IRVM for the purpose of the deduction from BIC. Secondly, IRVM is imposed on distributions by Senegalese companies and by foreign companies in respect of profits realised through Senegalese branches. In addition to the BIC on branch profits, IRVM is withheld on 50% of the Senegalese source income (Art. 147 bis).

It is not in accordance with the recommended territoriality of tax jurisdiction. Profits of Senegalese branches of companies established in ECOWAS countries should be taxable in Senegal at the recommended 40%. These profits should be excluded from taxable income of the company in the other ECOWAS country. In respect of the redistributed profits by the ECOWAS company Senegal should not impose IRVM. Consequently Art. 134 CGI should be amended to the extent that branches of ECOWAS companies established in Senegal are exempt from IRVM on 50% of profits realised and remitted to the parent.

B. Deductions

a. It is recommended to allow individuals a deduction for interest paid on mortgages for non-luxurious housing. Such personal deduction which at present is not available in Senegal, cannot easily be introduced in BIC, BNC and ITS. The IGR however, can be used for personal deductions and in principle, interest payments are deductible up to 5% of net income or 100,000 F.CFA whichever is the lower. It is recommended that article 83(1) be amended so that mortgage interest in respect of owner occupied housing, paid by individuals is deductible without limit, provided the house remains below a certain value (cut off point luxurious - non-luxurious) to be established in accordance with national criteria. The deduction of interest on mortgages in respect of luxurious housing must be disallowed.

b. Contributions to unemployment and health insurance and pension funds are not explicitly allowed as deductions in Senegal.

However, ITS allows a flat rate 7.5% deduction for income retained by employers with regard to pension provisions (Art. 54).

In addition IGR allows a deduction of life insurance premiums up to 5% of net income or 100,000 F.CFA whichever is the lower.

It is recommended that Art. 7(3)CGI be amended to the effect that such contributions are expressly being allowed as deduction for BIC.

c. In general all expenses necessarily incurred in the production of income are deductible (Article 7(1) CGI, BIC, Article 38 CGI BNC). Local branches are allowed to deduct a proportion of costs of headquarters corresponding with the relative turnover and to a maximum of 20% of income. (Art. 7)

Limited liability companies (SARL) are allowed to deduct certain management fees only if they correspond to real services and if these fees in the hand of the recipient are subject to BIC (Art. 13).

General clauses (see Arts. 132, 23) enable the Senegalese tax authorities to combat profit shifting between related parties. Interest payments, royalties and service fees between related parties are not allowed as deduction unless it is proven that the cost corresponds to real benefits and are working normal branches. The existing situation is in accordance with the recommendatiens.

d. Depreciation of capital expenditure is deductible (BIC, BNC) for the amounts actually depreciated up to certain maximum and in accordance with the straight line method (Art.7, 38 CGI). Accelerated depreciation is allowed in respect of new plant and equipment with a normal useful life of more than 5 years and provided they are used exclusively for industrial activities (manufacturing, storage, transport) or in agriculture. The first year maximum allowance is doubled so that the normal life time is reduced by 1 year.

Arts. 7 and 38 CGI should be amended to provide for depreciation at choice and investment allowances of 20% on plant, machinery and equipment.

e. Losses of the preceeding year are deductible. Unabsorbed losses may be carried forward for 3 years which is not in accordance with the recommended indefinite carry forward. Consequently, Articles 15, 38 should be amended.

C. Tax rates

a. Corporate income is generally taxed under BIC at 33.1/3%. In addition a 10% levy is imposed which however can be qualified as a form of forced saving. The levy can be used for reinvestment within 3 years. No reduced rates apply to small labour intensive local enterprises.

The situation is not in accordance with the recommended 40% rate for corporate income and consequently Article 28 CGI should be amended. In addition a reduced rate of 25% should apply to small, local, labour intensive companies. The reduced rate could be introduced through amendment of the 1981 Small Investment Code. The exact definition of small companies should be regionally determined.

b. IRVM is withheld on all distributions including dividends at 16% (exceptionally 8%). This is not in accordance with the recommended withholding tax on dividends of 10%. Consequently Article 151 CGI should be amended to the extent that IRVM on dividends is imposed at 10%.

c. IRVM is withheld on interest at 16% and BNC is withheld on royalties at 25% of 30% of gross amounts which is only partly in accordance with the recommended rate of 25%. Consequently Art. 31 [illegible], 151 CGI should be amended.

D. Tax credits

a. Dividends received by individuals are taxable under IGR for their net. after IRVM amount, but IRVM cannot be credited against IGR. The recommendations include a credit with refund for dividend withholding taxes imposed by any country in the West African region. The existing situation is an obstacle to national and intraregional investments.

Article 83(2) should be amended to delete the deductibility of IRVM on dividends for IGR. A new Article 94 bis should be inserted in the CGI to provide a credit with refund for IRVM withheld on dividends.

It was also recommended that individuals be allowed a credit for (a portion of) corporate income tax paid in Senegal (imputation BIC-IGR) or any other West African country (indirect tax credit). No credit exists in Senegal and this can be identified as an obstacle to national and intraregional investments. Consequently the new Article 94 bis should contain a credit for individuals against IGR payable for (aportion of) BIC paid in respect of dividends received.

b. Dividends received by companies should not be included in taxable income for BIC. (See A.c.). In addition, recipeint companies should be granted a credit with refund against its tax liability (BIC) for IRVM withheld on the received dividends. This credit is at present not granted in Senegal and this can be identified as an obstacle to investment.

It is recommended that a new Art. 28 be inserted to provide for such a credit, with refund if IRVM paid exceeds BIC payable.

c. Interest and royalties received by individuals and companies have been subject to IRVM and BNC (see C.c.). For non-residents, the withholding tax should be a final tax but for residents it is meant only as a pre-levy. On interest payments to residents, it was already recommended to exclude them from IRVM, IRC and BIC, IGR. (See A.a.).

Royalties however are taxable under BNC and again with the recipient under BIC or IGR for 10% to 30% of their value. It is recommended to delete the deductibility of 70 to 90% of royalty income from taxable income for BIC and therefore to amend Article 12 CGI. Instead, a credit should be granted for BNC against tax liability under BIC and IGR and consequently new articles 28 bis and 94 bis should be introduced to this extent.

d. An extra problem in schedular tax systems is the avoidance of inter-schedular double taxation of investment income. Profits realised in unincorporated industrial and commercial activities are at present taxable in Senegal under BIC at 16 or 28%. Remaining net income is again taxable under IGR at progressive rates. This is an extra obstacle to investments which does not occur in the Anglophone countries. It should be remedied by considering BIC on income from unincorporated activities as a pre-levy of IGR. This can be done by including gross industrial and commercial profits (before BIC) in taxable income for IGR and by granting a credit of BIC paid against the tax liability under IGR. In addition individuals should be entitled to a refund if the BIC paid exceeds the IGR payable. Consequently article 83(2) should be amended so as to delete deductibility of BIC. A new art. 95 bis should be inserted to introduce a credit with refund for BIC paid in respect of industrial and commercial profits realised in an unincorporated way.

e. The recommended package of incentives included tax credits for labour related costs notably 25% of first year costs of newly hired permanent (=5 years) employees and 50% of training costs, but provided that the benefits accrue directly to the investor.

At present no such tax credits are granted and new sections should be introduced in (BIC) the CGI to provide for them.

E. Miscellaneous

a. The recommended package of incentives included depreciation at choice, investment allowances, tax credits for labour related costs and reduced rates for small local, labour intensive companies. In addition, conditional tax holidays could be granted for selective purposes as defined within a regional development policy.

A 5 year tax holiday is granted in Senegal in respect of profits resulting from the expansion of existing or establishment of new factories and profits derived from the exploitation of Senegalese mineral concessions. This tax holiday should be repealed unless subregional agreement is reached. In addition investment allowances are granted for certain investments under circumstances. This is not in accordance with the recommendations and Articles 74 to 78 bis CGI should therefore be repealed.

b. Tariff concessions granted by the IC should be suspended until subregional agreement is reached.